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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DIANNE SMITH PHILLIPS, SIGGI PFUNDT,
and CHRIS C. YANCHAR

Appeal 2009-008445
Application 10/656,015
Technology Center 2100

Before JOSEPH L. DIXON, HOWARD B. BLANKENSHIP, and
JOHN A. JEFFERY, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

A Patent Examiner rejected claims 1, 3-8, 10-15, and 17-21. The Appellants appeal therefrom under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

A. INVENTION

The invention at issue on appeal relates generally to computer graphics programs, and in particular, to a method, apparatus, and article of manufacture for displaying objects and properties of such objects in a computer graphics program. (Spec. 1).

B. ILLUSTRATIVE CLAIM

Claim 1, which further illustrates the invention, follows.

> 1. A method for displaying a graphical illustration of an object in a computer graphics program, comprising:
>
> obtaining an object in a computer graphics program;
>
> displaying a properties palette for the object, wherein the properties palette comprises one or more object properties having corresponding property values;
>
> displaying a graphical illustration of the object in the properties palette, wherein one or more of the object properties, in the properties palette, are keynoted to refer to corresponding keynotes displayed in the graphical illustration in the properties palette.

C. REFERENCES

The Examiner relies on the following references as evidence:

Clevenger (http://www.daz3d.com/program/bryce/Bryce5_Manual_DAZ.pdf)

Parametric Technology Corporation et al. ("PTC" herein). (http://www.ptc.comlcompanylmaillexpress2002021download_guide.htm)

SkySof Software (CAD.OCX 1 ;http://www.download.com/CAD-OCX/3000-6677_4-1400022.html?tag=lst-2-1)

D. REJECTIONS

Claims 1, 3-8, 10-15, and 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clevenger in view of PTC.

Claims 7, 14, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clevenger et al. in view of SkySof Software.[1]

PRINCIPLES OF LAW

35 U.S.C. § 103

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). "[T]he Examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability." *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Furthermore, "'there must be some articulated

[1] We note that the rejection of claims 7, 14, and 21 is based upon Clevenger and SkySof, but these claims depend from independent claims 1, 8, and 15, respectively, which were rejected over the combination of Clevenger and PTC. Therefore, we view the rejection as based upon the combination of the three references. We note the problem has existed since December 21, 2006 after the claims were amended. Only those arguments actually made by the Appellants have been considered in this decision. Arguments which the Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37 (c)(1)(vii) (2008).

reasoning with some rational underpinning to support the legal conclusion of obviousness' . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

The question of obviousness is "based on underlying factual determinations including . . . what th[e] prior art teaches explicitly and inherently . . . ." *In re Zurko*, 258 F.3d 1379, 1383 (Fed. Cir. 2001).

ANALYSIS

Appellants argue:

> However, the ability to click a button to edit an object's properties is not even remotely similar to keynoted properties of an object. As is known, keynoting a drawing refers to providing labels within a drawing that are keyed or noted to correspond with a reference elsewhere (e.g., within text). In fact, keynoting is common in patent application drafting when a drawing contains labels or keynotes and such labels/keynotes are referred to in the text of a specification. To equate the use of a button or object attribute icon with a label of a part in a drawing or a keynote in a drawing is wholly without merit. In this regard, without a keynote, the appearance of a button (without clicking the button) would not provide any information as to what property of a drawing is being adjusted. In other words, if a button or object attribute icon were displayed next to an object, the user would have no way to know which portion of the actual object corresponds to the object attribute in the icon.

> The present claims provide that the object properties displayed in the properties palette are keynoted to correspond to the keynotes displayed in the graphical illustration. In other words, there are two locations for the keynotes to appear - once in the properties palette, and next in the actual graphical illustration. No such keynotes appear anywhere in Clevenger.

(App. Br. 8). While we agree with Appellants' claim interpretation regarding "there are two locations for the keynotes to appear-once in the properties palette, and next in the actual graphical illustration" (App. Br. 8), the Examiner has shown that the teachings of PTC at page 172 regarding the BOM balloons clearly evidences the need for a well-known correlation between the graphical image with a keynote symbol and its corresponding legend or properties in a separate non-graphical portion of a display for an accurate correlation between the graphical illustration and the corresponding textual material. With respect to Appellants' contention that "keynoting is common in patent application drafting when a drawing contains labels or keynotes and such labels/keynotes are referred to in the text of a specification," *id.,* Appellants have identified no express definition and no extrinsic evidence of a definition to support their interpretation of "keynoting" so as to show error in the Examiner's reliance upon the teachings of Clevenger and PTC. Therefore, Appellants' argument does not show error in the Examiner's showing of obviousness of independent claim 1.

Appellants further contend that "a BOM is clearly differentiable from the present invention. First, the BOM is not part of a properties palette. A properties palette has a specific meaning as understood in the art and as set forth in the claims and specification. In this regard, the claims provide that

the properties palette have object properties and corresponding values." (App. Br. 9). Again, Appellants have not identified any express definition of "properties palette" nor have Appellants provided any extrinsic evidence to show a specific meaning understood in the art. Therefore, Appellants' argument is unpersuasive of error in the Examiner's showing of obviousness of independent claim 1. Appellants contend that the properties palette has object properties and corresponding values (App. Br. 9) and the BOM does not describe or allude to such a palette. We find Appellants' argument unpersuasive since the Examiner relied upon the teachings of Clevenger as shown in the features of the Tree Lab which includes a tree preview graphical image and various sliders for settings corresponding values for the branch/trunk, tree, and foliage settings shown on page 130. Therefore, Appellants' argument does not show error in the Examiner's showing of obviousness.

Appellants contend that the "properties palette provides dynamic property values which can easily be identified in the displayed illustration via the keynotes." (App. Br. 9). Appellants' argument is not commensurate in scope with the express language of independent claim 1 and therefore cannot show error in the Examiner's showing of obviousness.

With respect to the combination of Clevenger and PTC, Appellants argue that "the combination would produce Clevenger's icons to be used to edit property values and a completely separate BOM without links from the property icon to this displayed graphical keynotes." *Id.* Again, Appellants' argument is not commensurate in scope with the express language of independent claim 1 and therefore cannot show error in the Examiner's showing of obviousness.

Appellants contend that the BOM of Clevenger is "static and does not have object properties with corresponding property values in the properties palette." (App. Br. 13). We disagree with Appellants and agree with the Examiner that there are multiple object properties and a corresponding value/label (which is equivalent to plural corresponding values in a one to one association thereby having plural properties). Therefore, Appellants' argument does not show error in the Examiner's showing of obviousness.

Appellants further argue that the BOM is static and does not change, but this argument is not commensurate in scope with the language of independent claim 1. Therefore, Appellants' argument does not show error in the Examiner's showing of obviousness.

With respect to dependent claims 3 and 4, the Examiner relies upon pages 34, 26, and 153 of PTC to evidence highlighting corresponding components features of a model as their surfaces are selected in the graphics window. (Ans. 6-7). Appellants contend that the claims provide for "highlighting a keynote in the graphical illustration when the cursor is passed over the corresponding object property (both of which are in the properties palette as claimed)." (App. Br. 14). Appellants further contend that the keynoted object property is not actually selected, but merely has the cursor over the keynoted object and in response thereto highlighting the corresponding keynoted object property in the properties palette. (App. Br. 15). Again, Appellants' argument does not preclude the Examiner's showing of selection in the express language of dependent claims 3 and 4. Therefore Appellants' argument does not show error in the Examiner's showing of obviousness.

With respect to dependent claim 5, Appellants contend that "hiding a part [of an illustration] does not hide an entire illustration with keynoted properties" as claimed. (App. Br. 16). Again, Appellants' argument is not commensurate in scope with the language of dependent claim 5 wherein an "entire illustration" is not expressly recited in the claim language. Therefore, Appellants' argument does not show error in the Examiner's showing of obviousness.

With respect to dependent claim 7, Appellants merely repeat the teachings of SkySof and alleged that such a description does not teach the claimed invention. We find Appellants' contention do not rise to specific arguments of patentability of dependent claim 7 and therefore does not show error in the Examiner's showing of obviousness.

Since Appellants have not set forth separate arguments for patentability of independent claims 8 and 15, these claims will fall with independent claim 1. Similarly, Appellants have not set forth separate arguments for patentability of the remaining dependent claims and they will fall with their respective independent claims. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Appellants' Reply Brief contains similar arguments as set forth in the Appeal Brief which we did not find persuasive of error.[2]

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[2]Appellants' argument regarding whether a proper PTO Form 892 has become part of the record (App. Br. 17; Reply Br. 19-20) is a petitionable matter under 37 CFR 1.181 – not an appealable matter. Because we do not have jurisdiction over this matter, it is therefore not before us. *See* MPEP § 706.01 ("[T]he Board will not hear or decide issues pertaining to objections and formal matters which are not properly before the Board."); *see also* MPEP § 1201 ("The Board will not ordinarily hear a question that should be decided by the Director on petition….").

CONCLUSION

For the aforementioned reasons, Appellants have not shown error in the Examiner's showing of obviousness of independent claim 1 and dependent claims 3, 4, 5, and 7.

ORDER

We affirm the obviousness rejections of claims 1, 3-8, 10-15, and 17-21.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

pgc